MOTION FILED
JUN 4 - 2009

(4)

No. 08-1358

In the Supreme Court of the United States

BRANDY HOLMES,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

On Petition for a Writ of Certiorari to Louisiana Supreme Court

BRIEF OF *AMICI* THE NATIONAL CENTER ON DOMESTIC AND SEXUAL VIOLENCE, THE NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, THE NATIONAL CLEARINGHOUSE FOR THE DEFENSE OF BATTERED WOMEN, ALONG WITH OTHER *AMICI*, ON BEHALF OF PETITIONER

Sarah M. Buel
Clinical Professor of Law
Domestic Violence Clinic
University of Texas
School of Law
727 E. Dean Keeton St.
Austin, TX 78705
Ph: 512.232.9326

**Counsel of record for the* Amici Curiae
Admission Pending

LEGAL PRINTERS LLC, Washington DC • 202-747-2400 • legalprinters.com

MOTION FOR LEAVE TO FILE BRIEF OF *AMICI* ON BEHALF OF THE NATIONAL CENTER ON DOMESTIC AND SEXUAL VIOLENCE

Pursuant to Rule 37.2 of the Rules of this Court, the *National Center On Domestic And Sexual Violence*, the *National Coalition Against Domestic Violence*, *the National Clearinghouse For The Defense Of Battered Women*, along with other *Amici* move for leave to file the accompanying brief in support of the petition for a writ of *certiorari*. Counsel for petitioner has consented to the filing of this brief; counsel for respondent has denied consent.

Amici Curiae have especial expertise in the manifestation of domestic violence, and the unique dynamics that arise in situations of intimate partner violence. Further, *Amici* recognize the profound injustice that arises when courts fail to fully consider or appreciate the context of domestic violence.

Petitioner, Brandy Holmes, was a battered woman acting under the domination and influence of her co-defendant at the time of the offense for which she has been sentenced to death. The abuse she endured at the hands of her co-defendant dramatically mitigates her moral culpability and explains her willingness to take blame for the entire episode. The Louisiana Supreme Court's failure to consider this evidence in determining whether the death sentence imposed upon her was excessive, results in an arbitrary, disproportionate and fundamentally unjust punishment. Moreover it reflects a continued flaw in the administration of the capital punishment scheme.

Accordingly, counsel respectfully asks that this Court grant leave to undersigned *Amici* to file the attached brief of *Amici Curiae*.

Respectfully Submitted,

Sarah M. Buel
Clinical Professor of Law
Domestic Violence Clinic
University of Texas
School of Law
727 E. Dean Keeton St.
Austin, TX 78705
Ph: 512.232.9326

**Counsel of record for the* Amici Curiae
Admission Pending

TABLE OF CONTENTS

MOTION FOR LEAVE TO FILE BRIEF OF *AMICI* ON BEHALF OF THE NATIONAL CENTER ON DOMESTIC AND SEXUAL VIOLENCE i

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

INTEREST OF THE *AMICI CURIAE* 1

STATEMENT OF THE CASE 3

SUMMARY OF ARGUMENT 10

ARGUMENT 13

I. MEANINGFUL CONSIDERATION OF MITIGATING CIRCUMSTANCES IS ESSENTIAL TO AN ACCURATE DETERMINATION OF WHETHER A DEATH SENTENCE IS ARBITRARY, EXCESSIVE, OR DISPROPORTIONATE 13

II. ENDURING SEXUAL AND DOMESTIC VIOLENCE IS A SIGNIFICANT MITIGATING CIRCUMSTANCE THAT IS OFTEN MISUNDERSTOOD BY THE SENTENCER. 15

A. Enduring Domestic Violence Has Particular Mitigating Significance 17

B. Meaningful Appellate Review of Evidence Is Essential Because Jurors Often Fail to Understand the Complex Realities Faced by Victims of Intimate Partner Violence

and Their Psycho-Social Responses to the Victimization 20

III. WITHOUT MEANINGFUL APPELLATE REVIEW, THERE IS A HEIGHTENED RISK OF ARBITRARY AND CAPRICIOUS DEATH SENTENCES. 23

CONCLUSION 25

TABLE OF AUTHORITIES

Cases

Atkins v. Virginia, 536 U.S. 304 (2002)..... 10, 11, 16

Commonwealth v. Stonehouse, 555 A.2d 772 (Pa. 1989)..... 21

Dando v. Yukins, 461 F.3d 791 (6th Cir. Mich. 2006)..... 21

Giles v. California, 128 S. Ct. 2678 (2008)..... 17, 18

Gregg v. Georgia, 428 U.S. 153 (1976)..... 13, 14

Hernandez v. Ashcroft, 345 F.3d 824 (9th Cir. 2003)..... 19

Kennedy v. Louisiana 128 S. Ct. 2641 (2008) 3, 11

Lockett v. Ohio, 438 U.S. 586 (1978) 10

McMaugh v. State, 612 A.2d 725 (R.I. 1992)..... 8

People v. Wilson, 487 N.W.2d 822 (Mich. Ct. App. 1992)..... 21

Pulley v. Harris, 465 U.S. 37 (1984)..... 14, 25

Roper v. Simmons, 543 U.S. 551 (2005) 11

State v. Hodges, 716 P.2d 563 (Kan. 1986) 22

State v. Holmes, 5 So.3d 42 (La. 2008) ..... passim

State v. Kelly, 478 A.2d 364 (N.J. 1984) 22

Walker v. Georgia, 129 S. Ct. 453 (2008) 14

Zant v. Stephens, 462 U.S. 862 (1983) 14

Other Authorities

Bureau of Justice Statistics, Violence Between Intimates, NCJ-149259 (DoJ, Nov. 1994) 7

Charles Patrick Ewing & Moss Aubrey, *Battered Women and Public Opinion: Some Realities Abuse the Myths*, 2 JOURNAL OF FAMILY VIOLENCE 257 (1987) 15

D. G. Kilpatrick, *et al.*, *A Two Year Longitudinal Analysis of the Relationship Between Violent Assault and Alcohol and Drug Use in Women*, 65 Journal of Consulting and Clinical Psychology 834 (1997) 19

Diane R. Follingstad, *et al.*, *Justifiability, Sympathy Level, and Internal/External Locus of the Reasons Battered Women Remain in Abusive Relationships*, 16 VIOLENCE AND VICTIMS 621 (2001) 15

Elizabeth M. Schneider, *Equal Rights to Trial for Women*, 15 Harv. C.R.-C.L.L. Rev. 623 (1980) .. 21

Evan Stark, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE (Oxford University Press 2007) 18

Evan Stark, *Commentary on Johnson's "Conflict and Control: Gender Symmetry and Asymmetry in Domestic Violence,"* 12 VIOLENCE AGAINST WOMEN 11 (2006) 18

Evan Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 Alberta. L.Rev. 973 (1995) 18

Jill Davies, *et al.*, *Safety Planning With Battered Women: Complex Lives/Difficult Choices* 78 (Sage Publications 1998) 22

Judith Herman, FATHER-DAUGHTER INCEST, (Harvard University Press 1981) 3

Judith L. Alpert, *et al.*, *Symptomatic Clients and Memories of Childhood Abuse, What the Trauma and Child Sexual Abuse Literature Tells Us*, 4 PSYCHOL. PUB. POL'Y & L. 941 (1998) 4

Lenore E. Walker, THE BATTERED WOMAN SYNDROME, (Springer Publishing Company 1984) 15

Lenore E. Walker, THE BATTERED WOMAN, (Harper Collins 1979) 15

Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 Mich. L. Rev. 1 (1991) 20, 21

Mary Ann Dutton & Lisa Goodman, *Coercion in Intimate Partner Violence: Toward a New Conceptualization*, 52 SEX ROLES 743 (2005) .. 6, 7

Mary Ann Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191 (1993) 7, 18

Michael A. Anderson, *et al.*, *"Why Doesn't She Just Leave?": A Descriptive Study of Victim Reported Impediments to Her Safety*, 18 JOURNAL OF FAMILY VIOLENCE 151 (2003) 18

Paige Hall-Smith, *et al.*, *Measured Battering: Development of the Women's Experience With Battering (WEB) Scale*, 1 WOMEN'S HEALTH: RESEARCH ON GENDER, BEHAVIOR AND POLICY 273 (1995) 17

Paige Hall-Smith, *et al.*, *Women's Experiences With Battering: A Conceptualization From Qualitative Research*, 5 WOMEN'S HEALTH ISSUES 173 (1990) 17

Regina A. Schuller, *et al.*, *Jurors' Decisions in Trials of Battered Women Who Kill: The Role of Prior Beliefs and Expert Testimony*, 24 J. APPLIED SOC. PSYCH. 316 (1994) 21

Sue Osthoff & Holly Maguigan, *Explaining Without Pathologizing: Testimony On Battering and Its Effects* in CURRENT CONTROVERSIES IN FAMILY VIOLENCE (Loseke, Gelles & Cavanaugh, eds. 2005)..... 15

Tracy Bennett Herbert, *et al.*, *Coping with an Abusive Relationship: How and Why do Women Stay?*, 53 JOURNAL OF MARRIAGE AND THE FAMILY 311 (1991) 16

Victor Strieb, *Death Penalty for Battered Women*, 20 FLA. ST. U.L. REV. 163 (1993)..... 11, 12, 17

William W. Harris, *et al.*, *In the Best Interests of Society*, 48 J OF CHILD PSYCHOLOGY AND PSYCHIATRY 392 (2007)..... 19

INTEREST OF THE *AMICI CURIAE*[1]

The *National Center on Domestic and Sexual Violence* addresses domestic and sexual violence, seeking to educate policy makers, including the courts, about the impact of domestic and sexual violence, and challenge potential outcomes that tend to blame or re-victimize survivors of domestic and sexual violence.

The *National Coalition Against Domestic Violence* (NCADV) provides training, public policy advocacy, and support to a network of over 2,000 local programs and state coalitions serving victims of domestic violence. NCADV also works to educate policy makers, including the courts, about the serious nature of domestic abuse and coercive control.

The *National Clearinghouse for the Defense of Battered Women* works to ensure justice for battered women charged with crimes, where a history of abuse is relevant to the woman's legal claim or defense. The National Clearinghouse provides technical expertise to battered women defendants, defense attorneys, battered women's advocates, expert witnesses, and others. The National

[1] Pursuant to Rule 37.3, a letter of consent from petitioner to the filing of this brief has been lodged with the Clerk of the Court. As a result of respondent's refusal to grant consent to the filing of this brief, a motion for leave to file this amicus is attached to this brief. Pursuant to Rule 37.6, counsel for *amici curiae* state that no counsel for a party authored this brief in whole or in part, and no person other than *Amici* or their counsel made a monetary contribution to this brief.

Clearinghouse works on a wide variety of cases, including those in which the history of abuse helps explain behavior, reduce culpability and/or mitigate punishment.

The *Victim Rights Law Center* (VRLC) provides legal representation to victims of rape and sexual assault, and promotes a national movement committed to seeking justice for every rape and sexual assault victim. The VRLC meets its mission this through direct representation of victims and national legal advocacy, training and education.

The *Women's Law Project* is dedicated to improving the legal and economic status of women and their families. Guided by principles of equality and justice for all women, the Law Project engages in high-impact litigation, public policy advocacy, public education, and individual counseling.

The University of Texas School of Law Domestic Violence Clinic's mission is to provide comprehensive legal services to indigent domestic violence victims and collaborate with community agencies to improve victim safety and offender accountability. The University of Texas School of Law Domestic Violence Clinic provided the essential support and resources necessary to draft this Brief.

STATEMENT OF THE CASE

Brandy Holmes's childhood, adolescence and early adulthood – in the words of this Court in *Kennedy v. Louisiana* – "cannot be recounted in these pages in a way sufficient to capture in full the hurt and horror."[2] Named after her mother's favorite drink, Brandy was born with the scars from a pregnancy awash in alcohol. From the earliest of ages, she had a greater need, but diminished capacity to protect herself.

When she was with her mother, Brandy was exposed to alcoholism and drug addiction. When she was with her father, he and other adults in the home sexually abused her.[3] At the age of 12, she was

---

[2] *Kennedy v. Louisiana*, 128 S. Ct. 2641, 2658 (2008) (observing "Rape has a permanent psychological, emotional, and sometimes physical impact on the child. . . . We cannot dismiss the years of long anguish that must be endured by the victim of child rape.") (internal citations omitted); *see id.* at 2676-77, (Alito, J., dissenting) ("'Long-term studies show that sexual abuse is 'grossly intrusive in the lives of children and is harmful to their normal psychological, emotional and sexual development in ways which no just or humane society can tolerate.'") (internal citations omitted). *See also Kennedy v. Louisiana*, 07-343, *Brief of Texas, et al.*, (noting "'Child sexual abuse also can play a major role in shaping the future sex criminal' and 'sexual revictimization' of the victim") (internal citations omitted).

[3] Many father-daughter incest victims are at risk for being in abusive relationships later, especially if they have not received counseling or other assistance in dealing with the attendant trauma. *See* Judith Herman, FATHER-DAUGHTER INCEST 92-94 (Harvard University Press 1981)(reporting that in order to flee the abuse, many incest victims are forced to leave home at young age, yet are often ill- equipped to strike out on their own and such limitations make them "vulnerable to entering

raped. R. 4161, 4166-67. After the rape, Brandy refused to eat in an attempt to starve herself to death. She was then committed to a psychiatric hospital in Mississippi. R. at 2348, CD of Juvenile Records at 1235-40.[4]

When she was released from juvenile and adult facilities, Brandy was easy prey for the older Robert

---

another abusive relationship."). When the child sexual abuse involves a father's betrayal, there is likely a sense of "simultaneous entrapment and helplessness (i.e., the prototypical family violence and/or incest scenario) . . .[which]interferes with normal child development." Judith L. Alpert, *et al.*, *Symptomatic Clients and Memories of Childhood Abuse, What the Trauma and Child Sexual Abuse Literature Tells Us*, 4 PSYCHOL. PUB. POL'Y & L. 941, 968 (1998).

[4] The State of Louisiana attempted to minimize this rape by suggesting that it involved consensual sex. R.at 6101-02, 6234. This is an unwieldy allegation, as the Louisiana legislature subsequently rendered oral, vaginal or anal intercourse with a child twelve years old or younger a capital offense, and indeed the very agency that prosecuted this case secured one of the two capital verdicts for non-homicide offenses. *See State v. Richard Davis*, 995 So. 2d 1211, 1212 (La. 2008) (observing that based upon *Kennedy v. Louisiana* "we are constrained to set aside defendant's death sentence and to remand the case to the First Judicial District Court for the resentencing of defendant to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence."). Consent is not, and was not, a defense to the charge of rape for sexual intercourse with a child under the age of 13. Regardless of this, the notion that this rape was consensual is largely contradicted by the psychiatric evidence indicating that Brandy was thereafter diagnosed with Post Traumatic Stress Disorder (PTSD) and Major Depression, diagnoses that were consistent from 1992 through a pretrial court-ordered expert evaluation performed in 2005. R. at 6125 (Testimony of Vigen); R. at 2363, (Competency Evaluation performed by George Seiden, M.D.)(hereinafter Seiden).

Coleman.[5] Coleman was not only chronologically older (Brandy was 23, Coleman was 33 at the time of the offense), but also was light-years ahead in terms of maturity (Brandy functioned at an age-equivalent of 9 -13).

Ms. Holmes relationship with Coleman was characterized by severe manipulation and abuse. The psychiatrist who examined Brandy and interviewed family members offered uncontroverted testimony that Brandy operated under the domination of Coleman.

Witnesses recounted seeing Coleman inflict physical, sexual, psychological, and verbal abuse upon Ms. Holmes. R. at 1297–1301. Coleman's abusive behavior[6] established a pattern of control, punctuated by physical violence against Ms. Holmes that served to keep her in an ongoing state of fear.

Ms. Holmes reported that when he was jealous, Robert Coleman had beaten her and "put a gun to her head". *Id.* Coleman had also beaten Ms. Holmes to prevent her from going to visit others, leaving

---

[5] Ms. Holmes was ultimately charged along with Robert Coleman with the capital murder at issue in this case.

[6] *Amici* use various terms such as intimate partner violence, domestic violence, abuse, and battering to describe the violent, abusive and controlling behaviors of Coleman against Ms. Holmes. Such terms are not meant to describe distinct phenomenon; rather they are used interchangeably to refer to "the broad range of behaviors considered to be violent and abusive within an intimate relationship." Mary Ann Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191, 1204 (1993) (discussing terms used in social science literature on intimate partner violence).

visible bruises and scratches observed by her mother and sister. R. at 1302–03.

Coleman also inflicted brutal violence on other women, such as Ashley Shantell Harvey, in Ms. Holmes's presence. This violence ranged from kidnapping and beatings to rapes and humiliating forced sex with others. R. at 2256 (detailing Coleman's kidnapping, beatings, sodomy, and vaginal and anal rapes by him as well as those with whom he ordered her to engage). Coleman also repeatedly ordered Ms. Holmes to engage in sex with Ashley Shantell Harvey, against the wishes of both women. R. at 1253.

At times, Brandy tried to leave Coleman. However, because he threatened her with violence she stayed. R. at 4164-65. Coleman's beatings were linked to his desire to dominate Brandy, keeping her in the home and beating her if she left for even short periods of time without his explicit permission, thus obviating the need to repeatedly forbid her from leaving him permanently. Ms. Holmes told people that she was afraid of Robert, that he was "really crazy," and that if she tried to leave, he would find her. R. at 1253 (Statement taken by CPSO Det. Kay Ward, Don Ashley, 1-29-03).

Coleman's violent reactions and threats against Ms. Holmes and others helped him "set the stage" to coerce and control her. His demonstrated brutality conveyed the message that his threats were credible. He took full advantage of Holmes's lack of tangible and personal resources with which to resist his control. *See* Mary Ann Dutton & Lisa Goodman, *Coercion in Intimate Partner Violence: Toward a New Conceptualization*, 52 SEX ROLES 743, 748 (2005) (explaining how batterers set the stage to "prime" the victim for coercion). Coleman also

fostered Ms. Holmes's emotional attachment to him, a function of both her love interest and her ever-present fear of his violence. *See* Dutton, *supra* note6, at 1224. His ongoing threat of harm increased her sense of worthlessness and social isolation, in essence "forcing" a dependency that cemented her emotional bond to him. *See id.* at 1224-25.

Coleman, typical of an abuser seeking coercive control, framed his abuse within the rubric of care and love. As a batterer, Coleman instilled within Ms. Holmes a sense of her own worthlessness – which gave him permission to beat and terrorize her; he also instilled within Ms. Holmes the sense that his abuse was inexorably connected to his love. The traumatic effects of ongoing abuse within this context manifest in immediate cognitive, behavioral and emotional responses that may interfere with the victim's ability to accurately assess her own safety. Mary Ann Dutton & Lisa Goodman, *Coercion in Intimate Partner Violence: Toward a New Conceptualization*, 52 SEX ROLES 743, 748 (2005). In a pattern that is not unusual for battered women,[7] Brandy Holmes defended her abuser, protected him, and lied on his behalf. As a result, when Ms. Holmes's family asked about the source of her bruises and scratches, she attributed them to Robert Coleman's jealousy, but went no further for fear of exposing and enraging him.

---

[7] The great majority of victims of serious domestic violence and sexual assault are women. In over 90% of the violence by intimates recorded in the National Crime Victimization Survey from 1987 to 1991, the victim was female. Bureau of Justice Statistics, Violence Between Intimates, NCJ-149259 (DoJ, Nov. 1994).

Consistent with the experiences of many battered women, when Holmes and Coleman were charged with capital murder, Holmes attempted to exonerate her abuser by claiming that she alone had committed the murder. [8]

Even the Assistant District Attorney who prosecuted this capital case expressed concern that Brandy had minimized the role that her boyfriend had played in the murder, attempting to take blame for the action of her abuser:

> Assistant Caddo Parish District Attorney Hugo Holland was interviewed concerning this report. It is his opinion that Robert Coleman may have played a more significant role in the instant offense than Brandy Holmes related to detectives. Certain forensic evidence at the scene leads Mr. Holland to believe that Robert Coleman could have been the murderer of Mr. Brandon and possibly could have shot him upon first entering the residence. Mr. Holland maintains that, because of several conflicting stories given by Holmes to interviewers, it probably will never be known who did exactly what in the Brandons' residence on the date of the murder and attempted murder. . . . Mr. Holland related that he believes Holmes'

---

[8] *Cf. McMaugh v. State*, 612 A.2d 725, 733-34 (R.I. 1992) (post-conviction relief granted where battered woman defendant, convicted with abusive husband codefendant of murdering a third person, had been coerced by him into giving false accounts of the incident favorable to him, as a result of his "domination through a focused pattern of extreme physical and mental abuse.")

> personality is one that would exhibit tendencies to cover for and/or make excuses for an individual that she cared for, namely Robert Coleman.

First Sentence Investigation Report, at 5-6.[9] The Sentence Investigation Report further observed:

> While speaking with a female detective in one interview, Holmes asked the detective if she had ever loved someone so much that she would do anything in the world for him. The detective then asked if the subject was referring to Robert Coleman, and Holmes replied that she was.

Id.

Ms. Holmes's admissions to the offense are also consistent with her efforts to protect Robert Coleman; at no time in these statements does she state that Coleman took part in the shooting or stabbing, despite the fact that testing revealed high velocity blood spatter on his clothes.

The abuse suffered at the hands of Robert Coleman, is relevant not merely to Ms. Holmes's suffering, but also essential to an understanding of the ongoing dynamics of their relationship: – both Ms. Holmes's inability to leave, and her desire to protect her abuser – are of a complexity beyond the understanding of many lay-persons.

---

[9] These comments were withdrawn from a subsequent version of the State's response to a Uniform Capital Sentence Report.

SUMMARY OF ARGUMENT

Robert Coleman raped, beat, and demeaned his co-defendant – petitioner in this case – Brandy Holmes. Yet the Louisiana Supreme Court did not consider Coleman's abuse of Ms. Holmes in assessing whether her death sentence was excessive. The Louisiana Supreme Court's failure to consider chronic domestic abuse as unique mitigating evidence violates the Eighth Amendment to the United States Constitution.

Meaningful appellate review is essential to ensure that defendants who are not categorically exempt from capital punishment, but nonetheless have diminished or limited moral culpability, are not subjected to the death penalty. This review is particularly necessary where the factor that renders the defendant less culpable, such as the psychological trauma that arises from sexual and domestic abuse, is one that juries are prone to minimize, misunderstand or mistakenly view as aggravating. *Cf. Atkins v. Virginia*, 536 U.S. 304, 320-21 (2002) ("The risk 'that the death penalty will be imposed in spite of factors which may call for a less severe penalty,' . . . is enhanced . . . by the lesser ability of mentally retarded defendants to make a persuasive showing of mitigation. . . . "). As this Court made clear concerning individuals with mental retardation, reliance on evidence that a battered woman is susceptible to defend, excuse or assist her batterer "as a mitigating factor can be a two-edged sword that may enhance the likelihood that the aggravating factor of future dangerousness will be found by the jury." *Id.* at 321.

Amici do not seek a categorical exemption from capital punishment for survivors of sexual and domestic violence. *Cf. Atkins*, 536 U.S. at 320-21 (barring execution of mentally retarded individuals); *Roper v. Simmons*, 543 U.S. 551 (2005) (barring execution of individuals who commit capital crimes when under the age of 18); *Kennedy*, 128 S. Ct. 2641 (barring execution of individuals who commit crimes (not against the state) that do not result in the death of the victim). Instead, *Amici* ask the Court to reaffirm that meaningful appellate review is an essential component to ensure that arbitrary, capricious, and discriminatory death sentences are not carried out. Consideration of the extensive mitigating issues presented by this case is essential to a constitutionally acceptable operation of capital punishment. Domestic violence is manifestly relevant to moral culpability. *See* Victor Streib, *Death Penalty for Battered Women*, 20 FLA. ST. U.L. REV. 163, 186 (1993) (noting review of cases involving women sentenced to death and executed "suggests two broad categories of battered women who may face the death penalty – women who kill their batterers and women who kill others to please or in concert with their batterers."). Streib notes that consideration of "Battered Women's Syndrome" or "Intimate Personal Violence" may be misunderstood by jurors, prosecutors and defense counsel. *Id.* Courts simply cannot guarantee that death sentences are not excessive unless evidence that the defendant was the victim of domestic violence is properly considered as a factor that could decrease her culpability.

Although the Louisiana capital punishment scheme identifies as mitigating the fact that "the offense was committed while the offender was under

the influence or domination of another person," LA. CODE CRIM. PROC. ANN. art. 905.5(c), the Court failed to ensure that the complex realities of domestic violence were considered in determining whether Ms. Holmes should live or die. *See* Victor Strieb, *Death Penalty for Battered Women*, 20 FLA. ST. U.L. REV. 163, 186 (1993) ("[B]attered women who kill third-party, completely 'innocent' victims nonetheless have a unique partial explanation for their otherwise unfathomable acts."). In failing to carry out its obligation to review the record to ensure that the death penalty was reserved for the most culpable defendant, the Louisiana Supreme Court dedicated only a half sentence to observe that Ms. Holmes had been raped at the age of twelve, and omitted entirely from its consideration that Ms. Holmes was the victim of sexual and domestic violence perpetrated by her co-defendant boyfriend.

ARGUMENT

I. MEANINGFUL CONSIDERATION OF MITIGATING CIRCUMSTANCES IS ESSENTIAL TO AN ACCURATE DETERMINATION OF WHETHER A DEATH SENTENCE IS ARBITRARY, EXCESSIVE, OR DISPROPORTIONATE.

Meaningful appellate review is essential to ensure that capital punishment is reserved for the most culpable capital defendants. In the "not all together satisfactory"[10] effort to ensure both consistency and decency in the application of capital punishment, this Court has considered meaningful appellate review an essential component of the structure designed to avoid arbitrary, discriminatory or excessive death sentences. *See Gregg v. Georgia*, 428 U.S. 153, 189 (1976) ("[T]he further safeguard of meaningful appellate review is available to ensure that death sentences are not imposed capriciously or in a freakish manner."); *id.* at 206 ("The provision for appellate review in the Georgia capital-sentencing system serves as a check against the random or arbitrary imposition of the death penalty. In particular, the proportionality review substantially eliminates the possibility that a person will be sentenced to die by the action of an aberrant jury.");

---

[10] *See Kennedy*, 128 S. Ct. at 2658-59 ("It is an established principle that decency, in its essence, presumes respect for the individual and thus moderation or restraint in the application of capital punishment . . . The tension between general rules and case-specific circumstances has produced results not all together satisfactory.").

id. at 211 ("An important aspect of the new Georgia legislative scheme, however, is its provision for appellate review."); *Zant v. Stephens*, 462 U.S. 862 (1983) (noting the role of the automatic appeal to preclude arbitrary imposition of the death penalty).

This Court's opinion in *Pulley v. Harris*, was interpreted by a number of state courts to relieve them of the obligation to conduct such review. 465 U.S. 37 (1984). *See State v. Holmes*, 5 So. 3d 42, 96 (La. 2008) (asserting that proportionality review was no longer required by federal law). More recently, Justice Stevens' statement respecting the denial of *certiorari* in *Walker v. Georgia* observed that *Pulley v. Harris* was "not meant to undermine our conclusion in *Gregg* and *Zant* that such review is an important component of the Georgia scheme." *Walker v. Georgia*, 129 S. Ct. 453, 456 (2008) (Stevens' statement concerning denial of *certiorari*).

Ms. Holmes's *Petition for Certiorari*, and other amicus briefs ably articulate the legal premise that dictates the need for meaningful appellate review of mitigating circumstances, especially in states that operate under the *Gregg v. Georgia* model of death penalty schemes, to ensure that a sentence of death is not arbitrary, excessive, or disproportionate.

This brief addresses more particularly why meaningful appellate review is necessary to consider and give meaning to enduring battering and its effects,[11] including sexual and domestic violence, as a mitigating circumstance.

---

[11] *Amici* use the term "battering and its effects" to describe the substance of expert testimony regarding abuse. Such evidence is often referred to as "battered woman syndrome" evidence, an idea first conceptualized in the late 1970s and coined as a term by psychologist Lenore Walker in the early 1980s. *See* Lenore

II. ENDURING SEXUAL AND DOMESTIC VIOLENCE IS A SIGNIFICANT MITIGATING CIRCUMSTANCE THAT IS OFTEN MISUNDERSTOOD BY THE SENTENCER.

Evidence concerning sexual and domestic violence is an extremely significant mitigating circumstance often misunderstood by juries. While evidence of enduring sexual and physical violence is profoundly mitigating, laypeople often erroneously discount complaints of domestic abuse based largely on myths about battered women. Among the most common myths are that no woman would stay in a relationship if the abuse was as bad as she claims; that battered women are "free to leave" the relationship; and that battered women brought the abuse on themselves and are to blame.[12]

E. Walker, THE BATTERED WOMAN (Harper Collins 1979) and Lenore E. Walker, THE BATTERED WOMAN SYNDROME (Springer Publishing Company 1984). For a complete discussion of the movement away from the "syndrome" term and toward the language used by *Amici*, *see* Sue Osthoff & Holly Maguigan, *Explaining Without Pathologizing: Testimony On Battering and Its Effects*, *in* CURRENT CONTROVERSIES IN FAMILY VIOLENCE 228-230 (Loseke, Gelles & Cavanaugh, eds. 2005).

[12] *See* Diane R. Follingstad, Margaret M. Runge, April Ace, Robert Buzan & Cindy Helff, *Justifiability, Sympathy Level, and Internal/External Locus of the Reasons Battered Women Remain in Abusive Relationships*, 16 Violence and Victims 621, 622 (2001) ("[L]ay persons often search for explanations as to why the woman stays in the abusive relationship...they may actually view her decision to stay in the relationship as an explanation for her victimization."); Charles Patrick Ewing & Moss Aubrey, *Battered Woman and Public Opinion: Some Realities Abuse the Myths*, 2 JOURNAL OF FAMILY VIOLENCE 257, 263 (1987) ("a substantial proportion of the public (from which

Moreover, while some laypeople may understand the impact of domestic abuse when a battered woman murders her abusive partner in self-defense, they often cannot grasp the dynamics when a battered woman acts in concert with, or even defends her abuser. Because laypersons often do not understand the dynamics that arise within a domestic violence setting, presenting such evidence runs the risk of prompting the jury to believe that the accused is guilty of fabrication and manipulation.

In a number of instances, this Court has instituted categorical exemptions from imposition of the death penalty based, in part, upon the inability of juries to fully apperceive and give appropriate meaning to, powerful mitigation.[13] Although some authorities have called for complete exemption from the death penalty for victims of domestic violence

---

juries are drawn) . . . apparently believe that a battered woman can 'simply leave' her batterer."); *see also* Tracy Bennett Herbert, Roxane Cohen Silver & John H. Ellard, *Coping with an Abusive Relationship: How and Why do Women Stay?*, 53 JOURNAL OF MARRIAGE AND THE FAMILY 311 (1991).

[13] For example, in *Atkins v. Virginia* this Court noted that one of the justifications for exempting individuals with mental retardation from execution was that evidence of mental retardation could be misunderstood or misconstrued, and as such was "a two-edged sword" that could enhance the risk of execution. 536 U.S. 304, 321 (2002). Similarly, in *Simmons*, this Court observed that merely permitting the jury to weigh a defendant's youth as mitigating circumstance was insufficient "as the prosecutor argued Simmons' youth was aggravating rather than mitigating." *Roper v. Simmons*, 543 U.S. 551, 573 (2005).

and abuse, *see* Victor Streib, *Death Penalty for Battered Women*, 20 FLA. ST. U.L. REV. 163, 186 (1993), *Amici* in this instance suggest that meaningful appellate review may be constitutionally necessary to ensure that 'the law's most severe penalty' is not 'imposed on one whose culpability or blameworthiness is diminished' by experiences of severe emotional, physical, and sexual abuse.

A. *Enduring Domestic Violence Has Particular Mitigating Significance*

Enduring domestic violence[14] is akin to torture. In addition to the physical harm, there is severe traumatizing as a psychological component. In *Giles v. California*, Justice Scalia, for the majority, insightfully explained, "Acts of domestic violence often are intended to dissuade a victim from resorting to outside help, and include conduct designed to prevent testimony to police officers or cooperation in criminal prosecutions." 128 S. Ct. 2678, 2693 (2008).

Ongoing abuse creates extreme power imbalances in which the batterer retains excessive influence and control. *See* Evan Stark, *Commentary*

---

[14] Domestic violence is now understood as continuous harm experienced in at least five areas of victims' lives: 1) recognized threat; 2) coping; 3) changed identity; 4) entrapment, and 5) disempowerment. Paige Hall-Smith, *et al.*, *Women's Experiences With Battering: A Conceptualization From Qualitative Research*, 5 WOMEN'S HEALTH ISSUES 173 (1990); Paige Hall-Smith, *et al.*, *Measured Battering: Development of the Women's Experience With Battering (WEB) Scale*, 1 WOMEN'S HEALTH: RESEARCH ON GENDER, BEHAVIOR AND POLICY 273 (1995).

on Johnson's "Conflict and Control: Gender Symmetry and Asymmetry in Domestic Violence," 12 VIOLENCE AGAINST WOMEN 1019, 1019-1025 (2006)(criticizing definition of battering based on specific incidents of violence and focusing instead on "[d]efining battering as a form of subordination rather than violence.").

This conception of domestic violence includes not simply physical harm, but an understanding of accompanied psychological imprisonment. The perpetrator's pattern of structural controls has a cumulative, negative impact essentially blind-siding the victim. Evan Stark, Coercive CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE (Oxford University Press 2007).

Social scientists have long understood intimate partner violence as part of "strategy used to subjugate the victim for the gain of the abuser." Michael A. Anderson, *et al.*, *"Why Doesn't She Just Leave?": A Descriptive Study of Victim Reported Impediments to Her Safety*, 18 JOURNAL OF FAMILY VIOLENCE 151 (2003). Dominance is achieved not through discrete acts of violence, but rather through a pattern of coercive tactics that keep the victim in a "state of siege."[15] Consistent with these dynamics, Coleman's physical violence against Ms. Holmes was

---

[15] Dutton, *Understanding Women's Responses to Domestic Violence, supra* note 6, at 1208. ; *see also Hernandez v. Ashcroft*, 345 F.3d 824, 837 (9th Cir. 2003) ("The effects of psychological abuse, coercive behavior, and the ensuing dynamics of power and control mean that 'the pattern of violence and abuse can be viewed as a single and continuing entity.'") (internal citations omitted).

just one tool among many others, such as isolation, humiliation, and emotional abuse.

Ms. Holmes was not only the target of severe abuse by Robert Coleman, but also witnessed his brutal violence against others. Ms. Holmes no doubt internalized this reality. The net effect kept Ms. Holmes in a chronic state of psychological entrapment and terror. Robert Coleman's physical, emotional, and financial abuse of Brandy Holmes further exacerbated pre-existing traumas and effectively eliminated her resistance to him and to his unlawful activities.[16]

Indeed, Ms. Holmes's experience as a victim of rape and physical assault as a child rendered her especially vulnerable to victimization as an adult. William W. Harris, *et al.*, *In the Best Interests of Society*, 48 J. OF CHILD PSYCHOLOGY AND PSYCHIATRY 392 (2007) (reporting that "[C]hildren's responses to trauma can render them simultaneously over-reactive, helpless and immobilized – whether as victims of abuse [or] witnesses to domestic and community violence. . . with the potential for long-lasting changes in brain anatomy and physiology.").

---

[16] An individual's vulnerabilities – ranging from substance abuse and mental health problems, to childhood abuse and neglect – can dramatically raise the risk that a person will become the victim of abuse or control. *See* Mary Ann Dutton & Lisa Goodman, *Coercion in Intimate Partner Violence: Toward a New Conceptualization*, 52 SEX ROLES 743 (2005) (discussing "creating or exploiting vulnerabilities"); D. G. Kilpatrick, *et al.*, 1997, *A Two Year Longitudinal Analysis of the Relationship Between Violent Assault and Alcohol and Drug Use in Women*, 65 JOURNAL OF CONSULTING AND CLINICAL PSYCHOLOGY 834, 834-847 (1997).

B. *Meaningful Appellate Review of Evidence Is Essential Because Jurors Often Fail to Understand the Complex Realities Faced by Victims of Intimate Partner Violence and Their Psycho-Social Responses to the Victimization*

In assessing whether a defendant, such as Brandy Holmes, warrants the most severe punishment, laypersons are often ill-equipped to measure the significance of domestic violence. Courts have recognized that understanding the impact and psychological complexity of intimate partner violence is beyond the ken of ordinary jurors.[17] Scholarly literature confirms that laypersons have many misconceptions about domestic violence that interfere with their ability to accurately understand it. These misconceptions include, for example: that battered women can easily leave their situations, and that women are responsible for their failure to leave,[18] that battering

---

[17] The body of jurisprudence accepting psychological expert testimony on battering is founded on the notion that ordinary citizens do not understand or appreciate the psychological complexity of domestic abuse. *See Commonwealth v. Stonehouse*, 555 A.2d 772 (Pa. 1989) (where defendant raised self-defense claim and presented expert testimony explaining battered women's syndrome, jury could utilize expert's testimony to assess how 'a reasonably prudent battered woman' would have reacted); *People v. Wilson*, 487 N.W.2d 822 (Mich. Ct. App. 1992) (noting prosecutor's inference that defendant should and could have left relationship if abusive, and that understanding of battered spouse syndrome was generally outside the realm of common appreciation); *see also Dando v. Yukins*, 461 F.3d 791, 801 (6th Cir. Mich. 2006).

[18] Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 Mich. L. Rev. 1 (1991);

is a series of discrete events rather than a continuing state of siege,[19] that battered women are passive and meek,[20] and that battered women are blameworthy.[21] Unfortunately, despite the best public education efforts of groups like *Amici*, research confirms that these and other misconceptions about battered women persist to this day.[22] Many of these misconceptions are based on the incorrect assumption that all battered women fit (or should fit) a particular profile. In reality, battered women face diverse circumstances, and employ an array of strategies for coping with abuse, all of which may help explain a woman's behavior in a particular situation.[23]

---

see also Regina A. Schuller, *et al.*, *Jurors' Decisions in Trials of Battered Women Who Kill: The Role of Prior Beliefs and Expert Testimony*, 24 J. APPLIED SOC. PSYCH. 316 (1994).

[19] Dutton, *Understanding Women's Responses to Domestic Violence*, *supra*, at 1208; *see also* Evan Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALBERTA. L.REV. 973, 980-81 (1995).

[20] Mahoney, *supra* note 18, at 44.

[21] Elizabeth M. Schneider, *Equal Rights to Trial for Women*, 15 HARV. C.R.-C.L. L. REV. 623, 625 (1980); *State v. Hodges*, 716 P.2d 563, 567 (Kan. 1986); *State v. Kelly*, 478 A.2d 364, 370 (1984).

[22] For example, research shows that laypersons still differ significantly from experts in their understanding of domestic violence. Regina A. Schuller, *et al.*, *Jurors' Decisions in Trials of Battered Women Who Kill: The Role of Prior Beliefs and Expert Testimony*, 24 J. APPLIED SOC. PSYCH. 316 (1994).

[23] Dutton, *Understanding Women's Responses to Domestic Violence*, *supra*, at 1196, 1225-30; Jill Davies, *et al.*, SAFETY

Mistaken assumptions about a battered woman's experiences often lead to unjustified conclusions about her credibility. For example, complaints of abuse may be viewed as exaggerated or even fabricated, based on the flawed reasoning that "if it was really that bad" she would have done something, such as left the batterer, sought medical treatment or called police. Because she did not do these things, the reasoning goes, she must necessarily be lying about the extent or even the existence of the abuse.

A battered woman's failure to leave, or effort to help her batterer, may lead to the baseless conclusion that by "staying," or defending her batterer she approves of what he does, or willingly agrees to act in concert with him. This is particularly relevant when the batterer engages in criminal conduct. These mistaken assumptions about battered women's experiences, typical among laypersons, ignore the complex realities of the lives of victims of intimate partner violence. The truth is that battered women's behaviors cannot be reduced to a simple dichotomy, such as leaving or staying. Rather, battered women's behaviors reflect the diverse strategies they use to try to reduce the violence or prevent it from getting worse.[24] What may appear to be tolerating or even inviting more abuse may well be a means of coping with ongoing violence.

PLANNING WITH BATTERED WOMEN: COMPLEX LIVES/DIFFICULT CHOICES 78 (Sage Publications 1998).

[24] *See* Dutton, *supra*.

In particular, coping strategies of compliance and defense of the perpetrator may seem illogical to outsiders. In fact, these are well-known responses to intimate violence. Such behaviors cannot be evaluated apart from the context of the power imbalance in the relationship. In that context, compliant behaviors cannot be assumed to signal approval of the conduct of the batterer, or willingness to participate.

Intimate partner violence is fundamentally about domination and influence. The pattern of coercive tactics operates to convey the batterer's demands to the victim as well as the genuineness of making good on his threats for noncompliance. Mary Ann Dutton & Lisa Goodman, *Coercion in Intimate Partner Violence: Toward a New Conceptualization*, 52 SEX ROLES 743, 743-47 (2005). In this way, the batterer can subvert her will to his, even without laying a hand on her, at any given time. By exerting ongoing control over her decisions, choices and ultimately, her actions, the batterer can keep his victim as "personally entrapped" as if he was physically restraining her even when she appears safe or free from her batterer. Stark, *supra*.

III. WITHOUT MEANINGFUL APPELLATE REVIEW, THERE IS A HEIGHTENED RISK OF ARBITRARY AND CAPRICIOUS DEATH SENTENCES.

This case demonstrates the re-emergence of a pre-*Furman*-like state of capricious imposition of the death penalty. This level of arbitrariness tracks the failure of the *Gregg*-precautions after state courts

began to interpret *Pulley v. Harris* as permission to rubber-stamp any imposition of the death penalty.

The Louisiana Supreme Court upheld the death sentence imposed upon Ms. Holmes, despite acknowledging that it could not determine whether Ms. Holmes or her co-defendant was primarily responsible for the offense. *State v. Holmes*, 5 So. 3d at 63-64. It upheld the exclusion of evidence concerning a jury's determination that her co-defendant Robert Coleman deserved a sentence of death, and failed entirely to consider the inequity that arose when Coleman received a new trial based upon errors during jury selection.

In its assessment of whether the death penalty was excessive, the Louisiana Supreme Court did not consider evidence within the record indicating that Brandy Holmes was the victim-survivor of debilitating abuse at the hands of her father, within the mental institution she was placed as a troubled adolescent, and ultimately at the hands of Robert Coleman.

Without this careful review by the Louisiana Supreme Court, this case signals a retrenchment to the pre-*Furman* arbitrary imposition of the death penalty.

CONCLUSION

For the foregoing reasons, *Amici* respectfully suggests that the petition for a writ of *certiorari* be granted.

Respectfully submitted,

*Sarah M. Buel**
Clinical Professor of Law
Domestic Violence Clinic
University of Texas
School of Law
727 E. Dean Keeton St.
Austin, TX 78705
Ph: 512.232.9326

**Counsel of record for the* Amici Curiae
Admission Pending